

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 12726 of 2004

Between:

Kunchala Kondaiah S/o Narsimham,
R/o Abhyudayanagar, Addanki, Prakasam District

..... PETITIONER

AND

1. The Deputy Registrar, Ongole, Office an Special duty, Cooperative Central Bank, Prakasam District
2. The Manager, Prakasam District Co-operative Central Bank Ltd., Addanki Branch, Prakasam District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction particularly in the nature of Writ of Mandamus declaring the action of the respondent No.1 in issuing the sale notice Dt 22-6-2004 as arbitrary, illegal and also against the Articles 14, 16, 21 of the Constitution of India.

Counsel for the Petitioner: MR.D. RADHA KRISHNA

Counsel for the Respondents: GP FOR COOPERATION

The Court at the stage of admission made the following:

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ORDER:

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Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

The petitioner seeks a Writ of Mandamus declaring the action of the first respondent in issuing the sale notice, dated 22-06-2004, as arbitrary and illegal.

It is not in dispute that the petitioner borrowed a sum of Rs.4,00,000/- from the second respondent-Bank in 1993 creating mortgage in respect of 25 cents of open land and 7 ½ acres of agricultural land. The loan amount was repayable within a period of seven years. The petitioner states that he paid instalments up to 1996. Thereafter, he could not make further payments and on 24-02-2004, he opted for One Time Settlement Scheme. This writ petition was filed on 20-07-2004 contending that his request for One Time Settlement Scheme is still pending with the second respondent and therefore, the first respondent is not justified in issuing the sale notice. This Court by order, dated 22-07-2004, while directing notice to the respondents,

granted interim stay of dispossession of the petitioner from the land in question. It was also ordered that the proposed sale may go on, but the same shall not be confirmed.

On behalf of the second respondent, a detailed counter-affidavit has been filed, in which it is stated that the request of the petitioner for One Time Settlement Scheme was already considered and an order was passed on 12-03-2004 holding that the petitioner is not entitled for any relief under the said Scheme inasmuch as the Scheme introduced under G.O.Ms.No.171 dated 07-05-2002 is applicable only to the debt, which is overdue for more than three years as on 02-04-1998. It is further stated that since the petitioner paid the first installment by 30-06-1996 and is liable to pay the second installment by 30-09-1996, the petitioner's debt is not overdue for more than three years. It is further stated that the award was passed as long back as on 08-01-1998 and against the said award, the petitioner preferred an appeal, O.A.No.82 of 1997, before the Cooperative Tribunal, Vijayawada, and on 08-04-2001 the same was dismissed on contest. Subsequently, the petitioner filed W.P.No.14402 of 2001 before this Court and this Court granted interim stay of execution proceedings subject to the condition that the petitioner deposits a sum of Rs.3,00,000/- to the credit of the Bank on or before 01-09-2001. It was also made clear by this Court that in the event of failure to deposit the said amount, the stay granted should stand rescinded automatically without any further reference to the Court and that the Bank would be at liberty to proceed with the execution proceedings. However, the petitioner did not comply with the said conditions. That apart, the petitioner got filed O.S.No.27 of 2001 through his two sons before the Court of the Senior Civil Judge, Addanki, seeking partition, in which there was an order of injunction in I.A.No.363 of 2001. The said application for injunction was subsequently dismissed on contest with exemplary costs. Thereafter, it appears that the petitioner filed C.D.No.146 of 1998 in the District Consumer Forum against the Bank and the same was also dismissed on 27-01-2003. It is also stated that the petitioner got filed another suit-O.S.No.61 of 2003

through his sons before the Court of the Junior Civil Judge, Addanki, seeking to set aside the award and once again sought injunction restraining the Bank to proceed with the execution by filing I.A.No.332 of 2003 in the said suit. On contest, the said application was also dismissed on 03-02-2004. Against the said order, C.R.P.No.901 of 2004 was filed before this Court, in which notice before admission was ordered and after contest, the revision was also dismissed on 14-06-2004 holding that the revision is not maintainable. Subsequently, the petitioner and his four sons filed a claim petition before the Deputy Registrar/Officer on Special Duty on 14-07-2004, but the same was also dismissed on 19-07-2004 as not maintainable.

As can be seen from the counter-affidavit, the petitioner has filed series of cases approaching different Courts to avoid repayment of the loan, but strangely suppressing all the said proceedings already initiated, this writ petition is filed claiming that his request for One Time Settlement Scheme is still pending with the second respondent. The said plea is also found to be incorrect from the counter-affidavit of the second respondent which shows that the petitioner's request was considered and rejected on 12-03-2004 and that the petitioner was also informed about the same.

In the light of the averments in the counter-affidavit, which stood un rebutted, I do not find any merit in the writ petition, which appears to be misconceived and not *bona fide*. No other ground is urged by the petitioner.

The writ petition is accordingly dismissed. It is needless to mention that the interim stay granted earlier shall stand vacated.

(G.ROHINI, J)

Date: 10-11-2004

Note:

Office to issue C.C. in one week.

B/o

ghn

To

1. The Deputy Registrar, Ongole, Office an Special duty, Cooperative Central Bank, Prakasam District
2. The Manager, Prakasam District Co-operative Central Bank Ltd., Addanki Branch, Prakasam District
3. Two C.Cs to the G.P. for Cooperation, High Court Buildings, Hyderabad (OUT)

4 Two C.D copies